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| **DELEGATION OF THE EUROPEAN UNION TO LIBYA** | | |
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| *Author: José Antonio Sabadell, HoD* | | **Date:** 18/10/2021 |
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**To: *Fernando GENTILINI, Managing Director for Middle East and North Africa***

**Subject: Libya - Run-up to presidential and parliamentary elections**

1. **SUMMARY**

* ***Although status quo is not sustainable and elections are unanimously considered as the only possible way out, the current legal set-up seems clearly unbalanced and may generate strong reactions before, during or after elections themselves. Memories of 2014, when elections opened the door for the division of the country and ultimately led to conflict, are very much alive.***
* ***The situation on the ground remains extremely fragile and the tensions generated by the electoral process could provoke violence either by design or by unplanned escalation of any of the low-level conflicts that permanently simmer in Libya.***
* ***The unity of the international community is key to keep the process on track and facilitate adjustments that may safeguard stability and the success of the electoral process.***

1. **ASSESSMENT**

Exchanges held in the last few days confirm that both the High National Elections Commission (HNEC) and UNSMIL have adopted a predominantly technical approach to elections, largely accepting the validity of the texts issued by the House of Representatives (HOR) despite significant shortcomings.

The main critics to the texts are the following:

* The most serious critic is that it does not respect the principle of simultaneity between parliamentary and presidential elections, allowing for one part (HOR) to interrupt or delay the process according to its interests. Simultaneity is one of the key basis of the political roadmap.
* The texts were approved at the HOR with gross procedural violations, including that a significant part was not voted by the Plenary, but issued under the sole authority of its President.
* The text on presidential elections is in fact a Constitutional norm, establishing a strong presidential system, unprecedented in Libya since the fall of the Gadhafi regime.
* Technical issues remain open, that were not addressed by HOR despite requests by HNEC; they may be solved by decrees, but this would further weaken the legal basis.

Although reactions against this legal framework have so far been muted, thanks in part to strong international pressure, it seems difficult to believe that actors from the West would readily accept a system that clearly plays against their interests, and that gives the East of the country significant control on its implementation.

What is missing fundamentally is a shared vision of the future of the country among political leaders. The continuation of a logic of confrontation between the main actors only weeks away from the scheduled date of elections may force some of the potential losers to try to prevent them from happening or to question their result, using all available means, including violent ones.

The way out of this complicated situation would require strong unity from the international community, that would continue to insist on the need to hold elections on December 24th, while re-balancing the process, in particular ensuring the simultaneity of both electoral processes. UNSMIL needs to be the main actor in this initiative.

1. **DETAIL**

Interesting gathering in Tunis on 15 October of EU Heads of Mission with the HNEC Chair, Dr Emad Sayegh. The meeting has led to a better understanding of plans ahead and challenges as regards the forthcoming Libyan Presidential and Parliamentary elections.

Dr Sayegh explained that HNEC has formulated technical remarks to the laws proposed by the HOR for the conduct of the Presidential and Parliamentary elections. Some of the HNEC suggestions have apparently been taken into consideration; others are expected to be addressed through decrees.

Procedural progress has allowed technical steps to move forward. Registration of new voters has added 500,000 new voters, for a total now of 2.8 million registered voters. Registration of the diaspora is in progress, but numbers will not be particularly significant (expected, around 10,000 voters).

Dr Sayegh indicated that in the coming weeks the following key steps can be expected: i) publication of lists of voters & appeal procedures; ii) distribution of voters’ cards; iii) regular contacts with relevant ministries and institutions (Education, Health, Supreme Court & others) to prepare different aspects of elections; iv) opening of the procedure for registration of candidates for Presidential and Parliamentary elections.

The HNEC Chair recognised the ambiguity of art. 20 of law on the Parliamentary elections (article that defines the actual timing for the holding of these elections). He considered that it should be interpreted in the sense that the first round of the Presidential elections will take place (in principle) on December 24th ; the Parliamentary vote will be held together with the second round of Presidential elections (in principle on February 20th, given the need to establish results, open a timeframe for appeals, and give 30 days after that).

Dr. Sayegh recalled that the date of December 24th is political, not technical. Logistical issues are complex and cannot be ignored – particularly taking into account the proximity of the target date. The “best case scenario” would see a month of November dedicated to administrative procedures and December focused on the electoral campaign. HNEC will request international support for elections’ observation.

Besides technical aspects, Dr Sayegh shared his views on some more politically charged issues:

* Elections have a public strong public support, even if important political actors are not effectively pushing for them. The Government of National Unity, the High Council of State and (according to his views) even the Presidential Council are trying to prevent them from happening.
* The overall context does not allow for perfect preparations. Nonetheless, to hold them now seems much better than postponing them, a postponement that could be for years and might fuel the risks of return to conflict.
* The publication of the laws make all other discussions irrelevant, including those related to the procedures for their approval.
* The current legislative set up responds to fears by HOR that the process would be subverted and result in having only Parliamentary elections, not Presidential.
* If the first round of Presidential elections is successful, it can help for an equally successful second round and proper Parliamentary elections (more complex technically than the Presidential ones).
* Only strong and legitimate institutions resulting from elections can assure withdrawal of foreign forces.

*Signed-off: José Antonio SABADELL, HoD*